

**ROUTH CRABTREE OLSEN, P.S.**

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Honorable Judge Karen A. Overstreet

Hearing Location: Marysville,

Hearing Date: January 12, 2010

Hearing Time: 9:00 am

Response Date: January 5, 2010

IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

IN RE:

JOEL C SIMICICH AND  
CLARISSA A SIMICICH,

DEBTORS.

**CHAPTER 13 BANKRUPTCY**

**NO.: 10-20176-KAO**

**MOTION FOR RELIEF FROM STAY  
BY JP MORGAN CHASE BANK, N.A.,  
ITS SUCCESSORS IN INTEREST,  
AGENTS AND ASSIGNS**

**I. Introduction**

COMES NOW, JP Morgan Chase Bank, N.A., its successors in interest, agents, assigns and assignors ("Creditor") and moves this court for an order terminating the automatic stay, allowing Creditor to proceed with and complete any and all contractual and statutory remedies incident to its security interests held in real property commonly described as 13722 W Vernon Ave, Goodyear, AZ 85338 ("Property"), and legally described as set forth in the Deed of Trust attached as an Exhibit to the declaration on file with the court. Creditor further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement and to contact the Debtor via telephone or written correspondence to offer such an agreement, which shall be non-recourse unless included in a reaffirmation agreement. Creditor further moves that, absent objection, the provisions of F.R.B.P. 4001(a)(3) be waived to avoid further deterioration of Creditor's secured position.

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Foreclosure is pending but on information and belief the sale date has not yet been set.

#### **V. Contractual Default**

Debtor is in default pursuant to the terms of the note for failure to make the required payments. Payments are credited as last received to first due. Creditor's loan status reflects payments now owing due after November 1, 2009. The following is a breakdown of the default:

<b>Date of Contractual Payments</b>	<b>Amount</b>	<b>Total</b>
November 1, 2009 to November 1, 2010	\$1,802.93	\$23,438.09
Accrued Late Charges		\$477.84
Escrow Shortage		\$3,928.34
<b>Total Default</b>		<b>\$27,844.27</b>

These figures are an estimate only and are subject to change as additional fees are incurred and payments are made or become due, including but not limited to the attorney fees and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel directly for a contractual reinstatement quote.

#### **VI. Post-Petition Default**

As of the date of this motion, the Debtor has accumulated the following post-petition defaults:

Post-Petition Payment Due Date	September 1, 2010
Post-Petition Payment Amount	\$1,802.93
Accrued Post-Petition Payment Default	\$5,408.79
Escrow Shortage	\$3,928.34
<b>Total Post-Petition Default</b>	<b>\$5,408.79</b>

These figures are an estimate only and are subject to change as additional fees are incurred and payments are made or become due, including but not limited to the attorney fees and costs incurred as a result of the filing of this motion. Please contact Creditor's counsel directly for a post-petition reinstatement quote.

1 **VII. Estimate of Obligation**

2 The approximate amount owed under the terms of the note is \$266,842.36. The  
3 following is an itemization of this approximate amount:

4 Principal Balance	\$244,497.44
5 Accrued Interest	\$17,938.74
6 Accrued Late Charges	\$477.84
7 Escrow Shortages	\$3,928.34
8 <b>Total Due</b>	<b>\$266,842.36</b>

9 This total is an approximation of the lien. This estimate is provided only for the purposes  
10 of this motion and cannot be relied upon for any other purpose, including tender of payoff. An  
11 exact, itemized payoff figure will be obtained from Creditor upon written request to counsel for  
12 the Creditor.

13 Other liens encumbering the Property include a scheduled debt in favor of National City  
14 with an approximate balance owed of \$35,000.00.

15 **VIII. Value of the Property**

16 Debtor's sworn schedules value the Property at \$127,400.00.

17 **IX. Authority**

18 Under 11 U.S.C. § 362 (d)(1), on request of a party in interest, the Court shall terminate,  
19 annul, modify or condition the stay for cause, including the lack of adequate protection.  
20 Adequate protection is lacking in cases where there is an insufficient equity cushion in the  
21 subject property. *In re Mellor*, 734 F.2d 1396, 1401 (9<sup>th</sup> Cir. 1984). An equity cushion is the  
22 amount of value in property that exceeds the amount owed on the property such that a secured  
23 creditor will not be subject to a loss in the event of a decrease in value while the property is  
24 encumbered by the automatic stay. *Id.* at 1400 n.2. In determining the amount of value in  
25 property, the likely costs of sale or liquidation must be considered. *In re Faires*, 34 Bankr. 549,  
26 550 (Bankr. W.D. Wash. 1983). In the case at bar, considering the value of the Property,

1 Creditor's total lien, and the likely costs of liquidation, there is an insufficient equity cushion and  
2 thus Creditor lacks adequate protection.

3 Under 11 U.S.C. § 362 (d)(1), on request of a party in interest, the Court shall terminate,  
4 annul, modify or condition the stay for cause. Debtor's Chapter 13 plan provides that the  
5 Property will be surrendered. Therefore, cause exists to terminate or annul the automatic stay.

6 **X. Conclusion**

7 THEREFORE, Creditor requests this Court enter an order terminating the automatic stay  
8 pursuant to 11 U.S.C. § 362 and that Creditor be allowed to immediately proceed with and  
9 complete any and all contractual and statutory remedies incident to the security interests held in  
10 the Property.

11 DATED this 18 day of November, 2010.

12 **ROUTH CRABTREE OLSEN, P.S.**

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15 By: /s/ Mark Moburg WSBA#19463 for:  
16 James K. Miersma, WSBA# 22062  
Attorneys for Creditor  
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